

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN PADILLA,

Plaintiff,

Case No: 07-cv-0368-PKL

v.

THE UNITED STATES OF AMERICA,

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION FOR
MORE DEFINITIVE STATEMENT**

I. Introduction

Plaintiff, through this class action complaint, appears to allege that he, along with other seamen similarly situated, has received insufficient unearned wages.¹ Specifically, Plaintiff alleges that he, and other crewmembers, were paid unearned wages after having suffered illness or injury “in the service of Defendant’s vessels” but that overtime was improperly not included in the calculation of such wages. The complaint contains nothing more. From the limited allegations, it is unclear whether the United States has waived its sovereign immunity and the Court has jurisdiction. Accordingly, the United States requests a more definitive statement pursuant to Fed. R. Civ. P. 12(e).

¹ “Unearned wages” are the wages that a seaman, who becomes injured or sick during his service, would have earned had he been able to complete the contractual terms of his employment. 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 6-29 (4th ed. 2004).

II. Complaint's Pleadings are Unintelligible

The complaint fails to allege the date on which the alleged cause of action arose or identify the name of the vessel on which the Plaintiff was employed. *See e.g., International Tag & Salesbook Co. V. American Salesbook Co., Inc.*, 6 F.R.D. 45, at 4 (S.D. NY 1943), (motion for more definite statement granted where the plaintiff failed to specify time period in which activities alleged were claimed to be performed by defendant). Furthermore, the Plaintiff fails to mention whether he has previously filed an administrative claim as required by the Clarification Act, 50 U.S.C. App. § 129(a). The Clarification Act provides that no suit may be brought by a seaman unless the claim has been presented to the United States Maritime Administrative (MARAD) in accordance with applicable regulations and has been administratively disallowed by that agency. 50 U.S.C. App. § 129(a); 46 C.F.R. § 327.1. Similarly, the Clarification Act makes the Suits in Admiralty Act (SAA), 46 U.S.C. §§ 30901-30918, the applicable waiver of sovereign immunity and the SAA requires any action to be brought against the United States within two years of its accrual. 46 U.S.C. § 30905.

Without more, the United States is unable to determine whether (1) the vessel in question is owned by the United States, (2) venue is proper, (3) an administrative claim has been properly filed, or (4) the statute of limitations has run. In short, the complaint, as currently drafted, is so vague and ambiguous that it fails to inform the United States as

to the general nature of the action as well as the incident out of which the cause of action arose. *In re Methyl Tertiary Butyl Ether Products Liability Litigation*, 233 F.R.D. 133, at 2 (S.D. NY 2005) (Rule 12(e) is designed to remedy “unintelligible pleadings”). Most importantly, from the limited allegations, it is unclear whether the United States has waived its sovereign immunity and the Court has jurisdiction.

Dated: August 7, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 7, 2007, the foregoing document was filed with the Clerk of Court and served in accordance with the Federal Rules of Civil Procedure, by Electronic Service, on all counsel or parties of record listed below:

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